

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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In the Matter of )  
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 Applications of Ameritech Corp., Transferor )  
 And SBC Communications, Transferee, For )  
 Consent to Transfer Control of Corporations )  
 Holding Commission Licenses and Lines )

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY  
 CC Docket no. 98-141  
 ASD File No. 99-49

**REPLY COMMENTS OF RHYTHMS NETCONNECTIONS INC.  
 IN SUPPORT OF COMPTTEL'S PETITION FOR RECONSIDERATION**

Rhythms NetConnections Inc. ("Rhythms") submits these reply comments in support of CompTel's Petition for Reconsideration of the Commission's *SBC Project Pronto Order*.<sup>1</sup> Contrary to SBC's objections, Rhythms endorses CompTel's conclusion that the Commission must reconsider its *SBC Project Pronto Order* to the extent that the Order would relegate CLECs operating in SBC's territory to a pure reseller role. As the CLEC Commentors note, such a role is not only inconsistent with the statutory framework of the Telecommunications Act of 1996, but is also inconsistent with this Commission's policies.<sup>2</sup>

On October 10, 2000, CompTel petitioned the Commission to reconsider certain portions of its *SBC Project Pronto Order*. The comments submitted illustrate substantial support for the CompTel Petition. CLEC Commentors, in fact, endorse the reconsideration with respect to SBC's obligations to continue to unbundle its loop network, as well as to allow line splitting. Alternatively, SBC inaccurately claims that the *SBC Project Pronto Order* sustains its position that the Project Pronto architecture is purely a packet-switching network that is not subject to

<sup>1</sup> Applications of Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, ASD File No. 99-49, *Second Memorandum Opinion and Order* (rel. Sept. 8, 2000) ("*SBC Project Pronto Order*").

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. ("1996 Act" or "Act").

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unbundling or line splitting. The Commission, therefore, should reiterate that the determination is limited to answering the narrow question of whether title of two pieces of equipment is permitted to be in the SBC ILECs, in order to remove any opportunity for misinterpretation by SBC, as well as their ILEC brethren.

**I. RHYTHMS AGREES WITH COMMENTORS THAT THE COMMISSION SHOULD CONCLUDE THAT PROJECT PRONTO MUST BE UNBUNDLED ON A NONDISCRIMINATORY BASIS**

CLEC Commentors agree with CompTel's observation that the Commission's refusal to take a position on whether SBC's broadband offering is subject to sections 251 and 252 of the Act must be revisited for several reasons.<sup>3</sup> In the *SBC Project Pronto Order*, the Commission's conclusion that "consumers will benefit not only from a more rapid deployment of advanced services, but from increased choices that stem from the competitive safeguards contained in SBC's proposal" contradicts the record presented, as well as the Commission's own interpretations of the 1996 Act.<sup>4</sup> The Commission determined that SBC's proposal is in the public interest based on the faulty premise that SBC would not have deployed Project Pronto *but for* the Commission's ruling in the *SBC Project Pronto Order*. Additionally, the Commission erroneously concludes that resale provisioning of DSL services ensures that consumers receive the benefits of competition in the advanced services market. Accordingly, the Commission must conclude that SBC's "Broadband Service" does not satisfy its obligations under section 251 and 252 of the Act.

**A. SBC's Project Pronto Was Never in Jeopardy Despite the FCC's Consideration Regarding the Ownership of Line Cards**

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<sup>3</sup> ATG Comments at 6; AT&T Comments at 1; Focal Communications Comments at 1-4; IP Communications Comments at 2-3; WorldCom Comments at 2. Petition for Reconsideration of the Competitive Telecommunications Association, *Applications of Ameritech Corp. Transferor and SBC Communications, Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, CC Docket No. 98-141, ASD File No. 99-49 (Oct. 10, 2000) ("CompTel Petition") at 2 (citing *SBC Project Pronto Order* ¶ 30).

<sup>4</sup> *SBC Project Pronto Order* ¶ 2.

One of the most disturbing aspects of the Commission's *SBC Project Pronto Order* is its apparent conclusion that SBC's deployment of Project Pronto hinges on action by the Commission to change the merger commitments made by SBC. Not only does this conclusion contradict the record presented in this proceeding, it is unanimously repudiated by all of the Commentors, including SBC. SBC readily admits that during the Commission's review of SBC's request it "proceeded to spend tens of millions of dollars on equipment" and that it was "in the process of making its ADSL service available to millions of potential customers."<sup>5</sup> "By SBC's own pronouncement," Allegiance remarks, "it is zooming ahead in its xDSL deployment."<sup>6</sup> ATG concurs in its Comments that "SBC is using the interim period to steal a march to market on its competitors through the legerdemain of asset shuffling and redefinition."<sup>7</sup> There is simply no basis for the conclusion that absent the ability for SBC to own the line cards, deployment of the NGDLC network would have been delayed. Thus, the Commission cannot conclude that its action was necessary for consumers to benefit "from a more rapid deployment of advanced services,"<sup>8</sup> as such a conclusion contradicts the evidence present on the record.

The Comments are also consistent with the record in this proceeding, which simply did not support the conclusion that SBC would not have continued with its Project Pronto initiative *but for* the Commission's order permitting the ILEC to own the equipment. In fact, SBC's February 15th filing expressly concedes that it could proceed with deployment of Project Pronto even without ILEC ownership of the line cards.<sup>9</sup> The question was never, as the Commission appears to assume in its Order, whether Project Pronto would be deployed. Rather, the very limited question before

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<sup>5</sup> SBC Comments at 2.

<sup>6</sup> Allegiance Comments at 6.

<sup>7</sup> ATG Comments at 1.

<sup>8</sup> See CompTel Petition at 2-3.

<sup>9</sup> Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau (Feb. 15, 2000) at 3.

the Commission was *who*—the SBC ILEC or the SBC affiliate—would own the equipment that SBC clearly intended to deploy.

Commentors agree with the Commission’s conclusion that extending advanced services to more consumers is in the public interest.<sup>10</sup> But the Commission then alternatively concludes *in error* that granting SBC’s request allows SBC to offer these services *sooner*.<sup>11</sup> While pushing for a rapid resolution, SBC nevertheless stated that “SBC *is now in the process* of investing hundreds of millions of dollars to deploy new and upgraded remote terminals.”<sup>12</sup> Deployment of Project Pronto, thus, continues apace. From SBC’s correspondence, it is clear that, one way or another, SBC would proceed with, and indeed was proceeding with, Project Pronto. Therefore, the Commission’s conclusion that the only way consumers will receive the benefits of Project Pronto is through immediate action on the ownership issues raised by SBC is wholly mistaken, and thus cannot satisfy the public interest standard.<sup>13</sup> As indicated below, rushing resolution of these issues without thorough analysis of a complete record comes at the expense of facilities-based competition.

B. Relegating CLEC’s to Resale Undermines the Express Purposes of the Act

With the “Broadband Service” as the only option, CLECs are limited to reselling only the type of DSL service to consumers that the incumbent has chosen for its advanced services affiliate to provide.<sup>14</sup> As Focal Communications argues, “the SBC ‘Broadband Offering’ is structured,” such that “SBC has relegated CLECs to resellers of its service, which limits competitive options

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<sup>10</sup> WorldCom Comments at 5; IP Communications Comments at 2, 9.

<sup>11</sup> *SBC Project Pronto Order* ¶ 23 citing SBC July 13 Ex Parte.

<sup>12</sup> SBC July 13 Ex Parte at 1.

<sup>13</sup> This is particularly true, as Commissioner Furchtgott-Roth, notes in his Dissent, since “[i]t was . . . entirely foreseeable, at the time that the conditions were being negotiated, that SBC would not be able to pursue its plan for deploying digital subscriber line services consistent with the merger conditions. In view of this fact, I do not understand why the Bureau insisted upon or SBC agreed to conditions that required an SBC separate affiliate to own equipment used to provide advanced services, particularly since the Bureau now seems to think that the public interest is actually better served by *not* imposing this condition.” *SBC Project Pronto Order*, Dissenting Statement of Commissioner Harold Furchtgott-Roth.

<sup>14</sup> IP Communications Comments at 5.

available to consumers.”<sup>15</sup> ATG similarly concludes that “it is clear from capital market trends that resale of advanced or other telecommunications services is not valued by investors as a viable business strategy for new market entrants.”<sup>16</sup> The Commission’s recognition that SBC’s “Broadband Service” offering relegates “competing carriers to effectively resell SBC’s ADSL service” suggests that CLECs should be pleased to resell SBC services, instead of deploying their own equipment.<sup>17</sup> This satisfaction with resale exhibits a fundamental departure from the Act, as well as Commission policies, designed to promote facilities-based competition.

The Commission has expressly recognized the importance of facilities-based competition in furtherance of the 1996 Act, concluding that sections 251 and 252, in particular, were enacted to direct the ILECs to open the local telecommunications market to facilities-based competition.<sup>18</sup> Facilities-based competition is important because “[o]nly facilities-based competitors can break down the incumbent LEC’s bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings.”<sup>19</sup> The Commission directed ILECs to provide CLECs with nondiscriminatory access to UNE subloops in order to “facilitate rapid development of competition, encourage facilities-based competition, and promote the deployment of advanced services.”<sup>20</sup> And, with specific reference to the local loop network, the Commission has previously acknowledged that “[t]he greatest benefits may be achieved through facilities-based competition, and that the ability of requesting carriers to use unbundled network

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<sup>15</sup> Focal Communications Comments at 3.

<sup>16</sup> ATG Comments at 6.

<sup>17</sup> *SBC Project Pronto Order* ¶ 23.

<sup>18</sup> *Local Competition Order* ¶¶ 10-15.

<sup>19</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-141, ¶¶ 4, 23 (rel. July 7, 1999) (“Moreover, only facilities-based competition can fully unleash competing providers’ abilities and incentives to innovate, both technologically and in service development, packaging, and pricing. . . . In order for competitive networks to develop, the incumbent LECs’ bottleneck control over interconnection must dissipate.”). *See also UNE Remand Order* ¶ 7.

<sup>20</sup> *UNE Remand Order* ¶ 207; *see also Id.* ¶ 206.

elements . . . is a necessary precondition to the subsequent deployment of self-provisioned network facilities.”<sup>21</sup> To abandon these principles on the premise that resale is sufficient and without any corresponding benefit to the public is blatantly arbitrary and capricious.

SBC’s version of allowing CLECs “to obtain the full features, functions, and capabilities of the equipment” *does not*—as the Commission concludes—“enable [CLECs] to compete more effectively against SBC by differentiating their product offerings.”<sup>22</sup> SBC admits that “the services being offered to CLECs are the same services that are being offered to SBC’s advanced services affiliates.”<sup>23</sup> Surely, the Commission did not *intentionally* debase facilities-based competition. Commentors note that SBC’s proposal does not allow competitors the flexibility to design their own service parameters “unless such services are offered by SBC,”<sup>24</sup> though the “Broadband Service” offered over the Project Pronto network—specifically the capability of the line cards—“by design fits the business plans of the SBC data affiliates.”<sup>25</sup> CLECs should likewise have the ability to access the network to meet their business plans, and preserve their entitlements under the Act and the Commission rules.

ATG argues that “CLECs who resell the SBC offering are limited to SBC’s chosen technology and its choice and timing of adoption of other technologies, whether or not compatible with the needs of the CLECs or their customers.”<sup>26</sup> The limited parameters that SBC will allow

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<sup>21</sup> *UNE Remand Order* ¶ 5.

<sup>22</sup> *SBC Project Pronto Order* ¶¶ 23, 25.

<sup>23</sup> SBC Comments at 9.

<sup>24</sup> Focal Communications Comments at 3. *See* Comments of Rhythms NetConnections Inc., In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, (October 12, 2000) (“Rhythms NPRM Comments”) at 73-74; Comments of Focal Communications Corporation, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, (October 12, 2000) (“Focal Communications NPRM Comments”) at 29.

<sup>25</sup> IP Communications Comments at 5.

<sup>26</sup> ATG Comments at 6.

CLECs to vary do not yield the kind of service differentiation that is the hallmark of a competitive marketplace as envisioned by the 1996 Act. For instance, Commentors admonish that SBC's decision to provide to competitors only the type and speed of DSL that it offers itself prohibits the provision of PVPs over fiber and limits competitors to UBRs for the QoS class.<sup>27</sup> Commentors also note that SBC only offers ADSL service, while CLECs provide a wide spectrum of flavors, including ADSL, RDSL, SDSL, IDSL, HDSL2, SHDSL, and VDSL.<sup>28</sup> Therefore, the Commission's conclusion that SBC's proposal "enable[s] Rhythms and others to differentiate their product offerings from those of SBC's Advanced Services Affiliate" is patently incorrect.<sup>29</sup>

Through facilities-based competition, Rhythms, joined by other DSL providers, has been able to generate a notable share of the advanced services market.<sup>30</sup> The Commission should act now to ensure that facilities-based competition is not foreclosed or relegated to simply resale. During this rapid deployment of the Project Pronto NGDLC network, SBC "continues to place other obstacles in the path of CLECs who wish to deploy their own facilities through collocation in the SBC Project Pronto remote terminals."<sup>31</sup> Rhythms, in its filings in this proceeding, urged the Commission not to grant SBC's request for modification of the Merger Conditions with regard to the DLC line cards.<sup>32</sup> It is crucial that the Commission not allow SBC to misconstrue its unbundling

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<sup>27</sup> Allegiance Comments at 5; *see* Technical Reference Notice for Broadband Service Phase 1.

<sup>28</sup> IP Communications Comments at 5; ATG Comments at 6-7, n. 9.

<sup>29</sup> *SBC Project Pronto Order* ¶ 28. Not only do the CLECs have the right to place line cards at remote terminals, the ILECs' unbundling obligations also include providing competitors with access to the management layer of the fiber portion of the loop as a feature, function and capability of that loop. The management layer is the embedded operational communications channel, which permits remote telemetry to each RT site via a partitioned, segregated interface. Using this channel, a complete inventory of line cards located at each RT can be remotely obtained by serial number and type. For instance, the element manager in Alcatel's Litespan DLC is capable of remotely accessing, interrogating and provisioning all hardware and software channel unit settings and features; can manage all alarms, facility performance remotely; and works with the ILECs' legacy OSS.

<sup>30</sup> Rhythms July 28 Ex Parte at 2-3.

<sup>31</sup> ATG Comments at 9.

<sup>32</sup> Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49 (March 3, 2000) at 10; Reply Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49 (March 10, 2000) at 7; Letter from the DSL Access Telecommunications Alliance to Carol Matthey, Deputy Bureau Chief, Common Carrier Bureau, Federal Communications Commission, CC Docket No. 98-141 (April 11, 2000) at 2.

obligations in the Project Pronto network. The Commission should expressly clarify that ILEC *resale* offerings, such as SBC's "Broadband Service" offering—while mandatory—do not alone fulfill ILEC obligations to provide interconnection, unbundled UNE or collocation under Section 251(c). To find otherwise would enable ILECs to undermine the statutory and regulatory goal of facilities-based competition and relegate competitors to a purely "resale" role.

C. SBC Must Be Required to Unbundle Its Project Pronto Network

CompTel asked the Commission to conclude that competitors have access to SBC's NGDLC network through unbundled network elements on a nondiscriminatory basis consistent with the ability of SBC's affiliates to purchase UNEs from the SBC ILEC.<sup>33</sup> Had the Commission, as CLEC Commentors urge,<sup>34</sup> made it unquestionably and unarguably clear that SBC must unbundle its Project Pronto network, then at the very least competitors would have access to the network SBC is spending billions to roll out.<sup>35</sup> As discussed above, the benefits that the Commission identified were likely to accrue to the public regardless of which entity owns the line cards. Yet, the conditions that are imposed on SBC's ability to own those cards do not sufficiently address the competitive deficiencies of the proposal, nor do they allow carriers to sufficiently distinguish their service offerings over the Project Pronto architecture.

Instead, the Commission catalogs, quite rightly, substantial competitive harm from SBC's proposal. For instance, "most significantly, the public loses the benefit of improved systems and processes that accrue to all providers of advanced services because SBC's Advanced Services Affiliate would no longer buy the same inputs used to provide advanced services as facilities-based carriers."<sup>36</sup> Further, "competing carriers would effectively lose the right to obtain similar

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<sup>33</sup> CompTel Petition at 2-3.

<sup>34</sup> ATG Comments at 6; Focal Communications Comments at 2-3; *see also* CompTel Petition at 4.

<sup>35</sup> Allegiance Comments at 4; *see* CompTel Petition at 1.

<sup>36</sup> *SBC Project Pronto Order* ¶ 24.



collocation arrangements on nondiscriminatory rates, terms and conditions.”<sup>37</sup> In addition, “unaffiliated carriers lose the benefit of obtaining low-cost OI&M services.”<sup>38</sup> Finally, there is increased risk that the conditions “will not be as effective at detecting discriminatory conduct” and the public “may lose the ability to benchmark the quality” of services received by competitors.<sup>39</sup> As discussed in more detail below, SBC’s proposals do not sufficiently address these concerns.

Furthermore, Commentors recognized the problems with SBC’s argument that Project Pronto need not be unbundled because the Project Pronto network, as a whole, is packet switching.<sup>40</sup> SBC argues that its “Broadband Service includes elements and equipment that the Commission has already expressly decided are *not* UNEs under the Act,”<sup>41</sup> and “not required by the *UNE Remand Order*.”<sup>42</sup> SBC fails to consider that the *UNE Remand Order* specifically states that ILECs “must provide requesting carriers with access to unbundled packet switching” where CLECs have none of their own facilities with DSLAM functionality at the remote terminal.<sup>43</sup> SBC’s deployment of a Project Pronto network incapable of unbundling would be inconsistent with its obligations under the 1996 Act to unbundle certain network elements, including local loops from the central office to the end user, as well as packet switching when certain criteria are met.<sup>44</sup> SBC, therefore, must make the broadband, packet switching UNE available whenever a CLEC cannot collocate a line card or traditional DSLAM at the remote terminal. This is *not* the same as an unregulated, untariffed and temporary resale service offering, such as the SBC “Broadband Service”.<sup>45</sup> Rather, SBC must

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> IP Communications Comments at 8.

<sup>41</sup> SBC Comments at 6.

<sup>42</sup> SBC Comments at 6.

<sup>43</sup> *UNE Remand Order* ¶ 313.

<sup>44</sup> 47 C.F.R. § 51.317(c)(3)(B).

<sup>45</sup> *See* CompTel Petition at 1.

provide its competitors with the same unbundled network elements, as the CLEC Commentors remark are provided to the SBC affiliate, such as the local loop and all of its features, functions and capabilities.

The Commission should reconsider its determination in the *SBC Project Pronto Order* to the extent that unbundled access to a broadband loop offering in the NGDLC architecture may be hindered. IP Communications concludes that “the Commission lacks a record sufficient to address the harms as the record currently stands.”<sup>46</sup> Rhythms, thus, supports the CLEC Comments urging the Commission to use the ongoing collocation and network architecture rulemaking proceedings to resolve these issues, as opposed to inadvertently allowing SBC, and other incumbents, to interpret the *SBC Project Pronto Order* to eliminate their unbundling and collocation obligations upon deployment of an NGDLC network. Furthermore, Rhythms recommends that the Commission use this opportunity to explicitly acknowledge that the question answered in this proceeding was merely one of ownership—whether the SBC ILECs or affiliates held the title for the equipment—in order to guard against the overzealous rhetoric of the *SBC Project Pronto Order* being misinterpreted by SBC.

## **II. VOICE AND DATA CLECS MUST BE ABLE TO SHARE A LINE IN THE PROJECT PRONTO ARCHITECTURE**

Rhythms agrees with CLEC Commentors that the Commission should comply with CompTel’s request to clarify “that competitors purchasing the unbundled loop network element, either separately or as part of the UNE ‘platform’, would have the same ability to access the SBC Broadband Offering as any other competitive carrier,” including the ability to share the loop to provide voice and data services.<sup>47</sup> IP Communications also correctly concludes that consumers

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<sup>46</sup> IP Communications Comments at 6.

<sup>47</sup> AT&T Comments at 2; WorldCom Comments at 5; *see* CompTel Petition at 4-5.

should not be limited to obtaining both voice and data services over their loop only when SBC provides the voice service.<sup>48</sup> SBC's claim that CLECs "have the same capacity to engage in line splitting and line sharing that they did before the Voluntary Conditions" does not obviate the ILEC's discrimination and relegation of competitors to receipt of an inferior service.<sup>49</sup> Accordingly, data providers and non-ILEC voice providers must be permitted to serve end users over the same line in the Project Pronto architecture.

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<sup>48</sup> IP Communications Comments at 6.

<sup>49</sup> SBC Comments at 9.

## CONCLUSION

For the reasons stated herein, Rhythms supports CompTel's Petition for Reconsideration of the *SBC Project Pronto Order* and respectfully requests that the Commission specifically conclude that SBC's obligations under sections 251 and 252 of the Act must continue to be met in the NGDLC network, regardless of SBC's business decision to offer a resold DSL "Broadband Service". The Commission should direct SBC to adhere to the regulations, which arise from the FCC's ongoing rulemakings. The Commission should further grant CompTel's request to provide clarification that SBC's network must provide both voice and data services over the same loop in the Project Pronto architecture.

Respectfully submitted,


RHYTHMS NETCONNECTIONS INC.

Jeffrey Blumenfeld  
Chief Legal Officer, General Counsel  
RHYTHMS NETCONNECTIONS INC.  
9100 East Mineral Circle  
Englewood, CO 80112  
303.476.4200  
303.476.5700 fax  
[jeffb@rhythms.net](mailto:jeffb@rhythms.net)

By:   
Christy C. Kunin  
Kristin L. Smith  
Elizabeth Braman  
BLUMENFELD & COHEN—  
TECHNOLOGY LAW GROUP  
1625 Massachusetts Ave., Suite 300  
Washington, D.C. 20036  
202.955.6300  
202.955.6460 fax  
[christy@technologylaw.com](mailto:christy@technologylaw.com)  
[kristin@technologylaw.com](mailto:kristin@technologylaw.com)  
[elizabeth@technologylaw.com](mailto:elizabeth@technologylaw.com)

Dated: November 9, 2000

I, Stanley M. Bryant, do hereby certify that on this 9<sup>th</sup> day of November, 2000, that I have served a copy of the foregoing document via \* messenger and U.S. Mail, postage pre-paid, to the following:



Stanley M. Bryant

\*Chairman William E. Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8B-201  
Washington, D.C. 20554

\*Commissioner Susan Ness  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8B-115  
Washington, D.C. 20554

\*Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8A-302  
Washington, D.C. 20554

\*Commissioner Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8C-302  
Washington, D.C. 20554

\*Commissioner Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8A-204  
Washington, D.C. 20554

\*Anna Gomez, Legal Advisor  
Office of Chairman Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8B-201  
Washington, D.C. 20554

\*Rebecca Begnon, Legal Advisor  
Office of Commissioner Furchtgott-Roth  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8A-302  
Washington, D.C. 20554

\*Deena Shetler, Legal Advisor  
Office of Commissioner Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8C-302  
Washington, D.C. 20554

\*Kyle Dixon, Legal Advisor  
Office of Commissioner Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8A-204  
Washington, D.C. 20554

\*Jordan Goldstein, Legal Advisor  
Office of Commissioner Ness  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8B-115  
Washington, D.C. 20554

\*Anthony Dale  
Accounting Safeguards Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 6-C461  
Washington, D.C. 20554

Jonathan D. Lee  
Vice President, Regulatory Affairs  
Competitive Telecommunications  
Association  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036-3508

Richard Metzger  
Pamela Arluk  
Focal Communications Corporation  
7799 Leesburg Pike, Suite 850 North  
Falls Church, VA 22043

Richard S. Whitt  
Cristin L. Flynn  
Dennis W. Guard, Jr.  
WORLD COM, INC.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Richard Levin  
Advanced TelCom Group  
110 Stony Point Road  
Second Floor  
Santa Rosa, CA 95401

Michael K. Kellogg  
Rachele E. Barkow  
KELLOGG, HUBER, HANSEN,  
TODD & EVANS, P.L.L.C.  
Sumner Square  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

\*Dorothy Attwood  
Chief, Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5C-450  
Washington, D.C. 20554

Howard Siegel  
Vice President of Regulatory Policy  
IP Communications Corporation  
17300 Preston Road, Suite 300  
Dallas, Texas 75252

James J. Valentino  
MINTZ, LEVIN, COHEN, FERRIS,  
GLOVSKY and POPEO  
701 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Kathleen M. Marshall  
Advanced TelCom Group  
200 South Virginia Street  
Suite 103  
Reno, Nevada 89501

Patrick J. Donavan  
Emily M. Williams  
Swidler Berlin Shereff Friedman LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007